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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KYLE CHRISTOPHER STAMPFLI,

Defendant and Appellant.

A154489

(Marin County
Super. Ct. No. SC197608)

This is an appeal from judgment following the entry of a guilty plea by defendant Kyle Christopher Stampfli to one count of stalking in violation of Penal Code section 646.9, subdivision (a).¹ Defendant's subsequent motion to withdraw his guilty plea was denied by the court following a contested hearing. The trial court then suspended sentence and placed defendant on probation for three years subject to numerous terms and conditions, including a warrantless search and seizure condition, participation in a batterers program and mental health and substance abuse treatment as directed by the probation officer. The trial court also ordered defendant to pay various statutory fines and fees, including a \$300 restitution fine, \$500 fine payable to the domestic violence fund, \$300 probation revocation fine (if applicable), \$40 court operations fee, and \$30 criminal conviction fee.

After defendant filed a timely notice of appeal, appellate counsel was appointed to represent him. Appointed counsel has filed a brief pursuant to *People v. Wende* (1979)

¹ Unless otherwise stated, all statutory citations herein are to the Penal Code.

25 Cal.3d 436 (*People v. Wende*), in which she raises no issue for appeal and asks this court for an independent review of the record. (See also *People v. Kelly* (2006) 40 Cal.4th 106, 124 (*People v. Kelly*).) Counsel attests that defendant was advised of his right to file a supplemental brief in a timely manner, but he has not exercised this right.

Mindful that our review is limited to grounds for appeal occurring after entry of the plea (Cal. Rules of Court, rule 8.304(b)(5)), we have examined the entire record in accordance with *People v. Wende* and *People v. Kelly*.² For reasons set forth below, we agree with counsel that no arguable issue exists on appeal. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On March 21, 2017, an information was filed charging defendant with the following crimes: stalking in violation of a restraining order within the meaning of section 646.9, subdivision (b) (count 1); engaging in electronic communication with the intent to annoy in violation of section 653m, subdivision (b) (count 2); disobeying a domestic violence restraining order in violation of section 273.6, subdivision (a) (count 3); and criminal contempt in violation of section 166, subdivision (c)(1)(A) (count 4). On March 22, 2017, defendant pleaded not guilty, and trial was set to begin on August 29, 2017.

On the first day of trial, the parties struck a deal by which the prosecutor agreed to amend count 1 to stalking (§ 646.9, subd. (a)) and dismiss the remaining counts.³ Defendant, in exchange, agreed to execute so-called *Cruz-Vargas* and *Harvey* waivers,⁴

² We grant defendant's motion to amend or construe his notice of appeal to include matters occurring after the plea, which we previously deferred ruling on until consideration of the merits of this appeal.

³ According to the probation report, defendant left numerous text and voice messages for the victim/mother of his child, threatening to harm her and/or take their child.

⁴ See *People v. Harvey* (1979) 25 Cal.3d 754 [upon a pleading defendant's waiver, the sentencing judge may consider his or her prior criminal history and the entire factual background of the case, including any unfiled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence];

and to enter an *Alford* plea.⁵ Defendant also agreed to a warrantless search and seizure condition, to attend a batterers program, to submit to a mental health and drug assessment as directed by his probation officer, and to stay away from the victim for 10 years. Finally, the parties agreed defendant would serve no time in state prison and 90 days in county jail with the option for defendant to submit an unopposed application for county parole. While stating a preference for more time to consider this deal, defendant, represented by counsel, ultimately entered his guilty plea.

On October 16, 2017, defendant notified the court he intended to hire private counsel to explore withdrawing his plea. Thereafter, on February 7, 2018, defense counsel did in fact file such motion, contending the plea was invalid due to defendant's limited cognitive abilities and insufficient time to consider the plea deal. A month later, defendant's motion was supplemented with an Expedited Adult Assessment addressing the state of his mental health.⁶

After a contested hearing, the trial court denied defendant's motion to withdraw his plea and, on April 9, 2018, suspended sentence and placed him on probation for three years. Among the terms and conditions of his probation per the plea, defendant was ordered to serve 90 days in county jail, complete a batterers program and participate in mental health and substance abuse treatment as directed by probation, consent to warrantless search and seizure, complete 40 hours of community service, and refrain from contacting the victim except through counsel for child custody issues.⁷ Lastly, the

People v. Cruz (1988) 44 Cal.3d 1247; *People v. Vargas* (1990) 223 Cal.App.3d 1107 [a defendant may consent to a term in a plea agreement providing for a higher sentence if the pleading defendant fails to meet certain conditions while he or she is released before sentencing].

⁵ See *North Carolina v. Alford* (1970) 400 U.S. 25, 37–38 [*Alford* plea is a guilty plea with a protestation of innocence or a denial of the facts supporting the charges].

⁶ We grant defendant's unopposed request for judicial notice filed on August 10, 2018.

⁷ Modification of this order was authorized in the event other family law orders were issued.

court imposed a \$500 domestic violence fund fine, \$300 restitution fine, \$300 probation revocation restitution fine (stayed pending completion of the probationary term), \$40 court operations fee, \$30 criminal conviction fee, and \$25 administrative screening fee.

On May 21, 2018, defendant timely appealed the judgment, and his request for certificate of probable cause was denied. Defendant then filed a petition for a writ of mandate requesting issuance of the certificate of probable cause. His petition was denied, as was his subsequent request for review by the California Supreme Court. (*Stampfli v. Superior Court (People)* (Aug. 2, 2018, A154905) [nonpub. opn.] review den. Sept. 12, 2018, S250512.)

On August 24, 2018, defendant filed a motion to amend or construe his notice of appeal to include matters occurring after the plea. On September 14, 2018, we deferred ruling on this motion until consideration of the merits of this appeal.

DISCUSSION

Neither appointed counsel nor defendant has identified any issue for our review. Upon our own independent review of the entire record, we agree none exists. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant, represented by competent counsel, “freely, voluntarily and intelligently” pleaded guilty to one felony count of stalking in violation of section 646.9, subdivision (a) after executing valid *Harvey* and *Cruz-Vargas* waivers. Defendant, pursuant to his plea agreement, accepted numerous terms and conditions, including a 90-day jail term, a warrantless search and seizure term, a 10-year victim stay-away term, and mandatory participation in a batterers program. The trial court also imposed various statutory fees and fines, including a \$500 fine payable to the domestic violence fund (§ 1203.097, subd. (a)(5)), a \$300 restitution fine (§ 1202.4, subd. (b)), and a stayed \$300 probation revocation restitution fine (§ 1202.44). This sentence, which was told to defendant by the trial court before entry of his valid plea agreement, was lawful. (Cal. Rules of Court, rule 4.414; §§ 1016–1018, 1192.5.)

Moreover, we note defendant moved after entry of his guilty plea to withdraw it, submitting in support of his motion a mental health assessment, among other papers. However, the trial court denied his motion after considering the papers and hearing

argument in court from both parties. Nothing in the record undermines the validity of the trial court's judgment. (See *People v. Nance* (1991) 1 Cal.App.4th 1453, 1457 [motion to withdraw a plea of guilty is left to the sound discretion of the trial court and must be based on clear and convincing evidence].)

Having ensured defendant has received adequate and effective appellate review, we affirm the trial court's judgment. (*People v. Kelly, supra*, 40 Cal.4th at pp. 112–113; *People v. Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment is affirmed.

Jenkins, J.

WE CONCUR:

Siggins, P. J.

Petrou, J.